BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

GERALD E. HICKS	)	
Claimant	)	
VS.	)	
	)	
BUTLER TRANSPORT, INC.	)	Docket No. 1,026,648
Respondent	)	
AND	)	
	)	
KANSAS TRUCKERS RISK MANAGEMENT GROUP	)	
Insurance Carrier	)	

ORDER

Claimant appealed the September 21, 2012, Award entered by Special Administrative Law Judge (SALJ) John C. Nodgaard. The Workers Compensation Board heard oral argument on February 13, 2013.

APPEARANCES

Robert R. Lee of Wichita, Kansas, appeared for claimant. Clinton D. Collier of Overland Park, Kansas, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. At oral argument claimant conceded that his drug test met the conditions set out in K.S.A. 2005 Supp. 44-501(d)(2)(A), (B), (D) and (E) and that he was not contesting the chain of custody and drug testing procedure at MEDTOX, the laboratory where claimant's urine sample was tested.

On March 8, 2013, the parties entered into a written stipulation that stated:

> 1. That Respondent paid temporary total benefits to claimant from June 6, 2006 through August 1, 2010. This timeframe *[sic]* equates to 216.86 weeks. The benefits were paid at a rate of $467.00 per week. The total amount paid equals $102,206.69. From 6/6/06 to 8/1/10 claimant was overpaid one week of benefits during the week of 5/15-5/22/07. He was also overpaid one week of benefits during

the weeks of 2/9-2/22/10. Therefore, claimant received temporary total benefits for 216.86 weeks but was paid as if he was off work for 218.86 weeks.[1]

In the written stipulation, the parties agreed that respondent paid a total of $268,565.06 in medical expenses.

ISSUES

In the September 21, 2012, Award, SALJ Nodgaard denied claimant benefits, concluding respondent met the requirements of K.S.A. 2005 Supp. 44-501(d)(2).

Claimant requests the Board reverse the September 21, 2012, Award. Claimant raises three arguments: (1) the drug test is inadmissable because the conditions set out in K.S.A. 2005 Supp. 44-501(d)(2)(C) and (F) were not met when his urine sample was collected, (2) respondent provided no evidence to support its argument that claimant's alleged drug impairment contributed to the accident as required by K.S.A. 2005 Supp. 44-501(d), and (3) respondent should be estopped from asserting the drug defense as it condoned claimant's drug use and enabled him to continue his driving activities both before the accident and after receiving notice of a positive result for cocaine following the accident. Claimant did not dispute that probable cause existed requiring him to undergo a drug test. Claimant contends he is permanently and totally disabled as a result of his accidental injuries.

Respondent contends it has met all the necessary requirements for admission of claimant's drug test results into evidence. Respondent argues there was sufficient evidence to establish that claimant was impaired by cocaine at the time of his accident and that claimant's impairment contributed to the accident. Respondent requests the Board affirm the Award.

The issues before the Board on this appeal are:

1. Are claimant's drug test results inadmissible?

2. If claimant's drug test results are admissible, did claimant's alleged impairment contribute to the November 7, 2005, accident?

3. Is respondent equitably estopped from asserting a defense that claimant was impaired by drugs and that impairment contributed to the November 7, 2005, accident?

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[1] Stipulation (filed Mar. 8, 2013).

4. If the Board finds that claimant's drug test results are inadmissible and/or finds respondent failed to prove claimant's impairment contributed to the November 7, 2005, accident:

A. What is the nature and extent of claimant's disability?

B. Is claimant entitled to future medical treatment?

C. Should claimant's workers compensation benefits be reduced by subtracting his Social Security retirement benefits? If so, how much is the reduction?

FINDINGS OF FACT

After reviewing the entire record and considering the parties' arguments, the Board finds:

Claimant drove a truck for respondent. On October 31, 2005, claimant called respondent's dispatcher, Norvin Slaughter, and told him that he had used three ounces of cocaine, drank some beer and it was not safe for him to drive. Claimant told the dispatcher he was quitting. The dispatcher told claimant they could work things out and for claimant to get to a motel and to call in the morning. Claimant walked five miles to Ontario, California, and stayed in a motel. As instructed, claimant called the dispatcher the next day. The dispatcher told claimant that he could keep his job and arranged for claimant to get a ride back to the truck. Claimant picked up his truck and continued to drive for respondent.

On November 7, 2005, claimant was en route to Rome, Georgia, to unload the truck. He testified there was heavy fog and he could not read the road signs. Near Cartersville, Georgia, claimant pulled off the road, but determined it was unsafe to park there because "the ground was going down."[2] He pulled out onto the roadway and drove until he found a spot to pull off where his truck "looked like it was setting all right."[3] Claimant looked in the rear view mirror and saw his trailer going over. It was loaded with pallets and was top heavy. The entire truck slid off the roadway and rolled, injuring claimant. Claimant received no traffic citations for the accident. Claimant testified that he injured his neck, shoulders, back, arms and had pain into the base of his skull. Claimant testified that he was unaware that respondent had a policy that required employees to undergo drug and alcohol testing after an accident. He did, however, believe there was a federal law requiring him to undergo drug and alcohol testing following an accident. After the accident,

[2] P.H. Trans. at 9.

[3] R.H. Trans. at 17.

claimant was taken to Cartersville Medical Center by ambulance, where he was asked to give a urine sample.

The afternoon of November 8, 2005, after being released from the hospital, claimant drove the truck to Atlanta, Georgia. He drove every day from November 8 through 12. A doctor from the hospital called claimant and told him his urine sample had tested positive for cocaine. Claimant was surprised by the results as he thought cocaine normally is out of a person's system in three or four days. Claimant testified that the last day he had used cocaine prior to the accident was on October 31, 2005. Claimant testified that when he learned of the positive drug test on November 10, he called respondent's dispatcher and was told his job was over and to bring the truck back to Kansas City. Claimant returned to Kansas City on November 12, 2005, and has not worked for respondent since. Respondent formally terminated claimant on November 18, 2005.

Respondent refused to provide claimant with any workers compensation benefits, alleging claimant was impaired by cocaine when the accident occurred. Claimant requested medical treatment and temporary total disability benefits at a February 16, 2006, preliminary hearing.

In a preliminary hearing Order issued on April 14, 2006, ALJ Barnes granted claimant's request for payment of medical bills associated with the accident, additional medical treatment and temporary total disability benefits. She excluded one of respondent's exhibits entitled Federal Drug Testing Custody and Control Form, because respondent failed to establish chain of custody beyond a reasonable doubt. Consequently, claimant's drug tests results were inadmissible. ALJ Barnes also ruled that respondent had failed to prove claimant was impaired or that impairment from drugs contributed to his injury. Respondent appealed. In a July 14, 2006, Order, a Board Member indicated the Board did not have jurisdiction to review ALJ Barnes' April 14, 2006, evidentiary ruling that the drug test results were inadmissible.

At the April 4, 2012, regular hearing, claimant testified more extensively about providing the urine sample at the Cartersville Medical Center following his accident. Claimant testified the signature on a form for the urine sample was not his and no one had read the form to him. Claimant could not remember seeing anyone put a label on the specimen container or being asked to initial the specimen bottle, but admitted he could have been asked to initial something. Claimant testified, for the first time at the regular hearing, that during the accident his trifocal glasses broke and he cannot read without them.

Respondent deposed Dr. Tim Ryan, who was the director and medical review officer (MRO) of the occupational medicine clinic at the Cartersville Medical Center on November 7, 2005. Dr. Ryan testified that on November 7, 2005, the United States Department of Transportation guidelines required truck drivers to undergo a urinalysis following an accident. Dr. Ryan testified he was familiar with the employee who collected

the urine sample (collector) and the process used to collect the sample. Dr. Ryan validated the drug collection process and supervised the collection of urine samples. He testified that the person giving the urine sample (test subject) would go into a room without another water source in order to prevent the urine sample from being adulterated. After urinating in a collection container, the test subject would bring the urine sample to the collector. The test subject would then observe the collector pour the sample into two separate containers.[4] The urine would be sealed in the two specimen containers with an adhesive containing the specimen number. The test subject would initial the specimen containers, which would be coupled with documentation that the urine sample was that of the test subject and that the temperature was proper. In the presence of the test subject, the urine sample and documentation would be placed in a plastic bag to be shipped by courier to the laboratory for testing. The shipping bag was then placed in a room accessed only by collector employees until it could be picked up by the courier. Claimant's urine sample was sent for testing to MEDTOX, a laboratory in St. Paul, Minnesota.

Within 24 hours after sending the urine sample to MEDTOX, Dr. Ryan would receive a fax from MEDTOX with the drug test results. If the results were negative, the results were filed away and Dr. Ryan's staff notified the test subject's employer of the negative results. If the results were positive, Dr. Ryan would verify that all of the collection steps were properly conducted, including matching the custody and control form with the results and that the form was completed properly. He would then complete an MRO verification worksheet. He would then contact the test subject and inform them of testing positive. Dr. Ryan testified that he would interview the test subject and tell them of their rights, which included offering to send a split sample to a second laboratory to validate the first test. If the test subject wanted a split sample to be tested, Dr. Ryan would contact the original laboratory and tell them to send the split sample to another laboratory selected by the test subject. After contacting the test subject, Dr. Ryan would call the employer and tell them of the positive drug test results.

MEDTOX's report indicated the level of benzoylecgonine, a cocaine metabolite, in claimant's urine sample was positive for 14,212 nanograms per milliliter. Dr. Ryan reviewed the records from Cartersville Medical Center concerning the collection of claimant's urine sample. He testified that all of the procedures previously described had been followed in the collection of claimant's urine sample. On November 10, 2005, Dr. Ryan received notification that claimant's urine sample had tested positive for drugs. Dr. Ryan called claimant with the drug test results and explained his rights to him. Dr. Ryan completed the MRO verification worksheet for claimant on November 10, 2005. On the worksheet, Dr. Ryan commented that claimant would call back about a split sample. If claimant had alleged that when the urine sample was collected he could not see because his glasses were broken, or had any other complaints about the urine sample collection,

[4] Dr. Ryan testified the United States Department of Transportation required two containers of the urine sample.

Dr. Ryan would have noted it on the MRO verification worksheet. Dr. Ryan also called respondent on November 10, 2005, and informed respondent of the positive drug test.

Claimant's attorney objected to Dr. Ryan's testimony as hearsay and lack of foundation, as he was not the collector of claimant's urine sample. Upon cross-examination, Dr. Ryan acknowledged he was not present when claimant's urine sample was collected and may not have been in the facility that day. Dr. Ryan agreed the collection process is only as accurate as the individual who collects and handles the specimen and completes the paperwork. Dr. Ryan averred he could testify to the accuracy of the handling of claimant's urine sample and the accuracy of the persons in his clinic who handled the urine sample. He also indicated there was no evidence that claimant's urine sample was ever tampered with. Dr. Ryan testified he did not have a strong opinion on the level of claimant's impairment at the time the urine sample was collected.

Dr. Jennifer A. Collins, laboratory director and director of forensic toxicology at MEDTOX in November 2005, testified that claimant's urine sample tested positive for benzoylecgonine at 14,212 nanograms per milliliter. Claimant's positive test results were then provided to Dr. Ryan. The remaining urine sample was kept by MEDTOX in a long-term freezer for over a year. Dr. Collins testified that since 1988, MEDTOX has been certified by the United States Department of Health and Human Services. Because claimant stipulated MEDTOX followed proper procedures in testing claimant's urine sample, a further discussion of Dr. Collins' testimony or MEDTOX's procedures is unnecessary.

Dr. Pedro A. Murati is an authorized treating physician for claimant and is the only physician who testified or whose records are in evidence with regard to claimant's medical treatment. Dr. Murati first saw claimant on June 28, 2006, and his last record in evidence is from November 21, 2011. The notes from Dr. Murati's November 21, 2011, visit with claimant contain 12 separate diagnoses that do not need to be set forth herein. Dr. Murati opined that claimant's 12 diagnoses or conditions were the result of the accident on November 7, 2005, with the exception of claimant's tenosynovitis condition.

At the time of his November 21, 2011, visit with Dr. Murati, claimant was taking Cymbalta, Neurontin, Percocet, Xanax and was using a Fentanyl patch. Dr. Murati indicated claimant would need chronic pain management for the rest of his life.

Dr. Murati initially opined that in accordance with the *Guides*,[5] claimant had: (1) a 25 percent right upper extremity functional impairment; (2) a 43 percent left upper extremity functional impairment; (3) a 5 percent whole person impairment under DRE Thoracolumbar Category II for myofascial pain syndrome affecting the thoracic paraspinals; (4) a 25

[5] American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

percent whole person impairment under DRE Cervicothoracic Category IV and (5) a 10 percent whole person impairment under DRE Lumbosacral Category III. He then indicated the foregoing impairments combined for a 60 percent whole body impairment. Removing the impairments he provided for claimant's tenosynovitis, Dr. Murati opined claimant had a 54% whole body impairment.

Dr. Murati opined claimant could no longer perform 8 of 10 non-duplicative tasks claimant performed in the 15 years prior to the accident as identified by human resource consultant Jerry D. Hardin. It was the opinion of Dr. Murati that claimant was essentially and realistically unemployable.

Jerry D. Hardin interviewed claimant on January 5, 2012, at the request of claimant's attorney. Mr. Hardin performed a task performance capacity assessment. When Mr. Hardin saw claimant, he was 72 years of age, had completed the 10th grade and later obtained a GED. Claimant had no other formal education, but did have a CDL license. Mr. Hardin opined that after reviewing Dr. Murati's November 21, 2011, report, claimant was essentially and realistically unemployable.

At the February 16, 2006, preliminary hearing, claimant testified he began receiving Social Security retirement benefits two months earlier. At the regular hearing, an exhibit showed that in 2011, claimant had received $20,736 in Social Security benefits with $18,900 deposited in his account and $1,836 deducted for Medicare benefits.[6] That was the only evidence in the record concerning claimant's Social Security retirement benefits.

SALJ Nodgaard concluded that respondent met its burden of proof required by K.S.A. 2005 Supp. 44-501(d)(2) that created a conclusive presumption that claimant was impaired due to drugs at the time of his injury. SALJ Nodgaard did not make a specific finding that claimant's impairment contributed to his injury or disability. However, by finding respondent was relieved of all liability for claimant's work-related injuries, SALJ Nodgaard implied that claimant's impairment contributed to the November 7, 2005, accident.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2005 Supp. 44-501(d) states, in part:

> (2) The employer shall not be liable under the workers compensation act where the injury, disability or death was contributed to by the employee's use or consumption of alcohol or any drugs, chemicals or any other compounds or substances, including but not limited to, any drugs or medications which are available to the public without a prescription from a health care provider, prescription drugs or medications, any form or type of narcotic drugs, marijuana, stimulants, depressants or hallucinogens. In the case of drugs or medications which

[6] R.H. Trans., Cl. Ex. 4.

are available to the public without a prescription from a health care provider and prescription drugs or medications, compensation shall not be denied if the employee can show that such drugs or medications were being taken or used in therapeutic doses and there have been no prior incidences of the employee's impairment on the job as the result of the use of such drugs or medications within the previous 24 months. It shall be conclusively presumed that the employee was impaired due to alcohol or drugs if it is shown that at the time of the injury that the employee had an alcohol concentration of .04 or more, or a GCMS confirmatory test by quantitative analysis showing a concentration at or above the levels shown on the following chart for the drugs of abuse listed:

	Confirmatory test cutoff levels (ng/ml)
Marijuana metabolite[1]	15
Cocaine metabolite[2]	150
Opiates:	
Morphine	2000
Codeine	2000
6-Acetylmorphine[4]	10 ng/ml
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine[3]	500

[1] Delta-9-tetrahydrocannabinol-9-carboxylic acid.
[2] Benzoylecgonine.
[3] Specimen must also contain amphetamine at a concentration greater than or equal to 200 ng/ml.
[4] Test for 6-AM when morphine concentration exceeds 2,000 ng/ml.

An employee's refusal to submit to a chemical test shall not be admissible evidence to prove impairment unless there was probable cause to believe that the employee used, possessed or was impaired by a drug or alcohol while working. The results of a chemical test shall not be admissible evidence to prove impairment unless the following conditions were met:

(A) There was probable cause to believe that the employee used, had possession of, or was impaired by the drug or alcohol while working;

(B) the test sample was collected at a time contemporaneous with the events establishing probable cause;

(C) the collecting and labeling of the test sample was performed by or under the supervision of a licensed health care professional;

(D) the test was performed by a laboratory approved by the United States department of health and human services or licensed by the department of health and environment, except that a blood sample may be tested for alcohol content by a laboratory commonly used for that purpose by state law enforcement agencies;

> (E) the test was confirmed by gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample; and
>
> (F) the foundation evidence must establish, beyond a reasonable doubt, that the test results were from the sample taken from the employee.

The Board finds that claimant's drug test results are admissible, as all of the requirements of K.S.A. 2005 Supp. 44-501(d)(2) have been met. Claimant argued the collection of the urine sample was legally flawed and, therefore, the requirements of K.S.A. 2005 Supp. 44-501(d)(2)(C) and (F) were not met. Dr. Ryan testified that he validated the collection procedure and supervised the collection of urine samples. His testimony satisfied the requirement of K.S.A. 2005 Supp. 44-501(d)(2)(C). The Board also finds that Dr. Ryan's testimony and the exhibits introduced at his deposition were sufficient foundation evidence to establish beyond a reasonable doubt that it was the urine sample taken from claimant on November 7, 2005, that was tested, as required by K.S.A. 2005 Supp. 44-501(d)(2)(F).

Claimant next contends that respondent failed to prove claimant's impairment contributed to the November 7, 2005, accident, as required by K.S.A. 2005 Supp. 44-501(d)(2). The Kansas Court of Appeals in *Wiehe*[7] addressed this very issue. There, Wiehe, after sustaining a work-related accident, tested positive for marijuana at a level that established a conclusive presumption under K.S.A. 2009 Supp. 44-501(d)(2) that Wiehe was impaired at the time of the accident. In *Wiehe*, a toxicologist, Dr. Daniel Brown, testified that a person impaired by marijuana functions normally until something unexpected happens. Charles Foshee, an addiction counselor, testified that the circumstances surrounding Wiehe's accident showed that drug impairment played a role in the accident. Foshee also testified that people who have high levels of marijuana have impaired judgment and impaired logic. Foshee explained that although a lot of people who used marijuana on a long-term basis are able to function normally, they will have a slower motor affect, be avoidant, be very tunnel visioned, and not be cognizant of things around them. In *Wiehe*, there was evidence that Wiehe's impairment contributed to his injury or disability.

The Board, with a great deal of reluctance, feels compelled to concur with claimant's argument. The facts of the current claim are distinguishable from those of *Wiehe*. No witnesses, such as law enforcement officials who investigated the accident, the person who collected claimant's urine sample, or anyone else who had contact with claimant immediately following the accident, testified. Unlike *Wiehe*, no toxicologist, physician, addiction counselor or other expert testified that claimant would not demonstrate overt signs of impairment. Respondent presented little, if any, evidence that claimant's

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[7] *Wiehe v. Kissick Construction Co.*, 43 Kan. App. 2d 732, 232 P.2d 866 (2010).

impairment contributed to the accident. This is puzzling in light of the fact that ALJ Barnes made a finding in the April 14, 2006, preliminary hearing Order that respondent failed to prove claimant's impairment contributed to the accident. Respondent relies on the fact that claimant's urine had 14,212 nanograms per milliliter of benzoylecgonine, which greatly exceeded the confirmatory cutoff level in K.S.A. 2005 Supp. 44-501(d)(2) for benzoylecgonine of 150 nanograms per milliliter. This evidence is sufficient to reach the finding that claimant was impaired, but not that his use of drugs contributed to his injury or disability.

Claimant's accident occurred in heavy fog. Claimant was cognizant of the fact that he was operating his truck in dangerous weather conditions and pulled off the roadway. There is little in the record to controvert claimant's testimony that it was the extraordinary fog that caused the accident. There is no proof that claimant's decision to pull his truck over to the side of the road, the location he chose to do so or the way he pulled his truck over was affected by his cocaine use seven days earlier. Simply put, respondent provided insufficient evidence to prove that claimant's impairment from cocaine contributed to the November 7, 2005, accident.

The Kansas Legislature addressed this very situation when it passed the 2011 amendments to the Kansas Workers Compensation Act. K.S.A. 2011 Supp. 44-501(b)(1)(D) now provides that if a worker is impaired pursuant to K.S.A. 2011 Supp. 44-501(b)(1)(C), there is a rebuttable presumption that the impairment contributed to the worker's accident, injury, disability or death.

The aforementioned finding of the Board renders moot the issue of whether respondent should be equitably estopped from asserting claimant was impaired by drugs and that impairment contributed to the November 7, 2005, accident.

The opinions of Dr. Murati and Mr. Hardin are uncontroverted, as respondent presented no testimony from medical or vocational experts with regard to the nature and extent of claimant's injuries and disability. Therefore, the Board finds claimant: (1) has a 54 percent whole person functional impairment; (2) has a 100 percent wage loss and an 80 percent task loss for a 90 percent work disability; and (3) is permanently and totally disabled. The Board finds all of claimant's related medical expenses should be paid by respondent. Dr. Murati indicated claimant will need chronic pain management for the remainder of his life. Consequently, the Board grants claimant's request for future medical care.

The Board must next consider K.S.A. 2005 Supp. 44-501(h), which states:

> If the employee is receiving retirement benefits under the federal social security act or retirement benefits from any other retirement system, program or plan which is provided by the employer against which the claim is being made, any compensation benefit payments which the employee is eligible to receive under the workers

> compensation act for such claim shall be reduced by the weekly equivalent amount of the total amount of all such retirement benefits, less any portion of any such retirement benefit, other than retirement benefits under the federal social security act, that is attributable to payments or contributions made by the employee, but in no event shall the workers compensation benefit be less than the workers compensation benefit payable for the employee's percentage of functional impairment.

When a worker sustains injuries from a work-related accident and then retires, the employer is entitled to a reduction of claimant's compensation benefit payments by subtracting the weekly equivalent of the worker's Social Security retirement benefits. It is respondent's burden to prove the amount of claimant's Social Security retirement benefits.

Based on claimant's testimony, the Board finds claimant's Social Security retirement benefits began on December 18, 2005. The only evidence concerning the amount of claimant's Social Security retirement benefits is that in 2011, he received annual benefits of $20,736, which calculates to $398.77 per week ($20,736 divided by 52 weeks). Respondent could have asked claimant to sign a release giving respondent access to claimant's Social Security retirement payment record. Respondent also could have asked the ALJ to order claimant to produce a record of his Social Security retirement payments, obtained claimant's bank records and, if necessary, asked that terminal dates be extended. The Board, commencing January 1, 2011, will reduce claimant's workers compensation benefits by subtracting $398.77 per week from claimant's weekly workers compensation disability payments of $467 per week.

CONCLUSION

1. Claimant's drug test results are admissible, as the conditions of K.S.A. 2005 Supp. 44-501(d)(2) were met.

2. Respondent failed to prove claimant's cocaine impairment contributed to the November 7, 2005, accident.

3. Claimant's argument on equitable estoppel is moot.

4. Claimant has a 54 percent whole body functional impairment and a 90 percent work disability.

5. Claimant is permanently and totally disabled.

6. All of claimant's related medical expenses shall be paid by respondent.

7. Upon proper application to and approval by the Director, claimant is entitled to future medical benefits.

8. Respondent is entitled to reduce claimant's workers compensation disability benefits by deducting his Social Security retirement benefits commencing January 1, 2011.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.[8] Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, the Board modifies the September 21, 2012, Award entered by SALJ Nodgaard by finding:

1. The Board affirms the SALJ's finding that claimant's drug test results are admissible and there was a conclusive presumption that claimant was impaired due to using drugs, but reverses the SALJ's implied finding that respondent proved claimant's impairment contributed to the November 7, 2005, accident.

2. Claimant is entitled to $467 per week for 1.57 weeks of permanent partial disability payments based upon his 54 percent functional impairment in the sum of $733.19 through November 18, 2005; followed by 28.43 weeks of permanent partial disability payments based upon claimant's 90 percent work disability at the rate of $467 per week in the sum of $13,276.81 from November 19, 2005, through June 5, 2006; followed by temporary total disability payments at the rate of $467 per week in the sum of the statutory maximum of $100,000 for the period from June 6, 2006, through August 1, 2010; followed by 21.71 weeks of permanent total disability payments at the rate of $467 per week in the sum of $10,138.57 from August 2, 2010, through December 31, 2010; followed by $68.23 ($467 - $398.77 for Social Security retirement benefit credit) per week beginning January 1, 2011, in permanent total disability payments not to exceed $851.43; for a total award due and owing of $125,000, less any amounts previously paid.

The SALJ did not approve the contract for attorney fees, and the Board will not address that matter.

The Board adopts the remaining orders set forth in the Award to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

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[8] K.S.A. 2012 Supp. 44-555c(k).

Dated this ____ day of April, 2013.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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